

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Case No.: 7:18-cv-00169-BO

JIMMY EDWARDS, ROBERT HUNT and
DOLORES HUNT, and CLIFFORD
MCKELLAR, JR. and EMMA MCKELLAR
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

CSX TRANSPORTATION, INC.,

Defendant.

**CSX TRANSPORTATION INC.’S
MOTION TO DISMISS COMPLAINT**

Fed. R. Civ. P. 12(b)(6)

Defendant CSX Transportation, Inc. (“CSXT”)¹, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, by and through its undersigned counsel, hereby moves to dismiss plaintiffs’ Class Action Complaint.² The grounds for this motion are more fully set forth in the Memorandum in Support filed contemporaneously herewith.

WHEREFORE, CSXT respectfully moves that the Court enter an order dismissing plaintiffs’ Class Action Complaint, and granting CSXT such other and further relief as the Court deems just and appropriate.

¹ On November 16, 2018, plaintiffs voluntarily dismissed without prejudice all claims against former defendants CSX Corporation and CSX Intermodal Terminals, Inc. *See* ECF No. 19.

² Two other lawsuits are pending before this Court involving the same subject matter and asserting essentially the same claims against CSXT. *See Moore v. CSX Corp., et al.*, No. 7:18-cv-00177 and *West Lumberton Baptist Church, et al., v. CSX Corp., et al.*, No. 7:18-cv-00178. CSXT is simultaneously moving to dismiss the *Moore* and *West Lumberton Baptist Church* actions on the same grounds it asserts in the instant motion.

November 30, 2018.

Respectfully submitted,

/s/ April N. Ross

April N. Ross
N.C. State Bar No. 35478
Scott L. Winkelman
Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington, D.C. 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
Email: aross@crowell.com
Email: swinkelman@crowell.com

*Counsel for CSX Transportation, Inc. by Special
Appearance*

/s/ Henry L. Kitchin, Jr.

Henry L. Kitchin, Jr.
N.C. State Bar No. 23226
MCGUIREWOODS LLP
Post Office Box 599 (28402)
Wilmington, North Carolina 28401
Telephone: (910) 254-3800
Facsimile: (910) 254-3900
Email: hkitchin@mcguirewoods.com

Counsel for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I, Henry L. Kitchin, Jr., of McGuire Woods, LLP, certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on this day, copies of the foregoing will be served on the following by the Court's Case Management / Electronic Case Filing ("CM/ECF") system:

Daniel K. Bryson
Scott C. Harris
Matthew E. Lee
WHITFIELD BRYSON & MASON, LLP
900 West Morgan Street
Raleigh, NC 27603
Counsel for Plaintiffs

Joel R. Rhine
RHINE LAW FIRM, P.C.
1612 Military Cutoff Road, Ste. 300
Wilmington, NC 28403
Counsel for Plaintiffs

/s/ Henry L. Kitchin, Jr. _____
Henry L. Kitchin, Jr.
Counsel for CSX Transportation, Inc.